



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

MISCELLANEOUS CAUSE NO. 685 OF 2012

**THE DEPOSIT PROTECTION FUND BOARD AS LIQUIDATOR OF
PRUDENTIAL BUILDING SOCIETY (IN LIQUIDATION).....APPLICANT**

VERSUS

JAMES M. KAHUMBURA.....1ST RESPONDENT

WILSON KIPKOTI.....2ND RESPONDENT

LUCY N. KAHUMBURA.....3RD RESPONDENT

PRUDENTIAL DEVELOPERS LIMITED.....4TH RESPONDENT

HAZEL PROMOTIONS LIMITED.....5TH RESPONDENT

LE VOGUE HAIR & BEAUTY SALON LIMITED.....6TH RESPONDENT

BRISKY PROPERTIES LIMITED.....7TH RESPONDENT

INTERSTATE COMMERCIAL AGENCIES.....8TH RESPONDENT

PACIFIC HOLDINGS LIMITED.....9TH RESPONDENT

PELICAN ENGINEERING & CONSTRUCTION CO.....10TH RESPONDENT

STANDARD ASSURANCE (K) LTD.....11TH RESPONDENT

RULING

1. This court by the Ruling of 14th April 2016 made a finding that this suit is primarily an investigative suit. That Ruling was in respect to an application made by the 1st Respondent, 5th Respondent and 9th Respondent. Those Respondents made a request of particulars of the case against them, from the liquidator of Prudential Building Society, in respect to this matter. **Justice F.O. Ochieng** made a finding by his Ruling that this suit is only an investigative suit. It is useful to reproduce paragraph 36 to 40 of that Ruling, as follows:

“assets of the company had dissipated, it was the Liquidator’s case that the respondents may have information which could be useful in the proposed investigations.

36. It is only after the investigations were concluded that the court would be in a position to ascertain whether or not the respondents were to be held answerable or accountable to such assets as may have “got lost” when the respondents were in positions of trust, in respect to the assets of the company.

37. *At this stage, it is premature to conclude that the court would, as much as conclude, that the respondents were liable. There is a real possibility that unless the Liquidator leads evidence to connect the respondents to assets of the company, which cannot now be accounted for, the respondents may have nothing to answer to.*

38. *But it is also possible that the respondents may provide information which could assist the court in resolving the mystery concerning how the assets of Pioneer Building Society were lost, causing grief to the persons who had entrusted their money to the said Building Society.*

39. *If the respondents do not have any useful information, which could assist the Liquidator and the court in the process of investigations, and if the Liquidator does not link the respondents to assets which ought to have remained with the Building Society, that would be the end of the matter.*

40. *The point I am making is that, at this stage, the respondents do not have, in the case before me, a claim in the nature of a Plaintiff, which the Liquidator had the onus of proving.”*

2. In view of the above finding, I find no merit in the two applications before me. Those applications are filed by 3rd, 6th and 7th Respondent. They are two applications of 16th May 2014 and 18th July 2014. In Both application the applicants seek their names be struck out of this matter because this claim is duplicated of HCCC No 453 of 2003, and there is no claim against them.

3. The applications are in my view brought in misapprehension of the law and the action before court. These proceedings were instituted in accordance to section 323 (2) and (3) of the repealed Companies Act which provides, *interalia*, that the court on conducting the proceedings may make declaration or give direction for purpose making liability of any person on any debt or obligation due to the company, in this Prudential Building Society. It is therefore premature for the applicants to state the case is not disclosed against them. It is for that reason I find the applications have no merit. The Notice of Motions dated 16th May 2014 and 18th July 2014 being without merit are dismissed with costs.

4. At the reading of this Ruling directions will be given on the hearing of this matter.

DATED, SIGNED and DELIVERED at NAIROBI this 28th day of APRIL, 2020.

MARY KASANGO

JUDGE

ORDER

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17th April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **28th day of April, 2020.**

MARY KASANGO

JUDGE